

19 April 1988  
OCA 88-1238

MEMORANDUM FOR:

ALD/OGC  
CAP/OP

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FROM:

Legislation Division  
Office of Congressional Affairs

SUBJECT:

Federal Employees' Leave-Transfer Act of  
1988, H.R. 3757

1. On 17 March 1988, the Committee on Post Office and Civil Service reported out the above-captioned bill. As you recall, the Agency was given special status by being allowed to set up its own internal leave transfer program. A copy of the reported-out bill is attached.

2. The report on the bill, No. 100-519, goes into some detail on the types of reports the Agency must file with the President and with Congress. Specifically, the report states:

The Committee does not believe that the reports of the excepted agencies need to be so detailed as to compromise intelligence sources and methods. Rather, the Committee is interested in the numbers of employees involved, the amount of leave transferred, and other comments on the general administration and operation of a leave-transfer program.

It is our interpretation that, insofar as the bill requires reports to be filed with the Congress, this means they could be filed with the intelligence oversight committees. Providing the numbers of employees involved should not cause a problem with respect to such a filing when interpreted in conjunction with section 6 of the Central Intelligence Agency of 1949. However, it is questionable as to whether a requirement to file this information with the President poses a problem.

3. The bill has not yet been voted on in the House, but soon may see floor action. It would then be referred to the Senate for consideration. If the report language (also attached) does indeed pose a problem it could be remedied at this stage. Please advise me on [redacted] whether we need take any action.

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Attachments

OCA/LEG, [redacted] (19 April 1988)

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100TH CONGRESS  
2d Session

HOUSE OF REPRESENTATIVES

REPORT  
100-519

## FEDERAL EMPLOYEES' LEAVE-TRANSFER ACT OF 1988

MARCH 17, 1988.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. ACKERMAN, from the Committee on Post Office and Civil Service submitted the following

### REPORT

[To accompany H.R. 3757]

[Including cost estimate of the Congressional Budget Office]

The Committee on Post Office and Civil Service, to whom was referred the bill (H.R. 3757) to amend title 5, United States Code, to permit voluntary transfers of leave by Federal employees where needed because of a medical or other emergency situation, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "Federal Employees' Leave-Transfer Act of 1988".

#### SEC. 2. VOLUNTARY TRANSFERS OF LEAVE.

(a) AUTHORITY.—Chapter 63 of title 5, United States Code, is amended by adding at the end the following:

#### "SUBCHAPTER III—VOLUNTARY TRANSFERS OF LEAVE

##### "§ 6331. Definitions

"For the purpose of this subchapter—

"(1) the term 'employee' means an employee as defined by section 6301(2), excluding an individual employed by the government of the District of Columbia;

"(2) the term 'personal emergency' means a medical or family emergency or other hardship situation that requires, or is likely to require, an employee's prolonged absence from duty and to result in a substantial loss of income to the employee because of the unavailability of paid leave;

"(3) the term 'leave recipient' means an employee whose application to receive donations of leave under this subchapter is approved; and

"(4) the term 'leave donor' means an employee whose application to make 1 or more donations of leave under this subchapter is approved.

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tions from section 7351. The Committee amendment contains an exemption from section 7351 for solicitation, donation, or acceptance of leave under the leave-transfer program.

#### EXCLUSION AUTHORITY

Upon written request, OPM may exclude from the Government-wide leave-transfer program an agency or a unit of an agency if OPM determines that the leave-transfer program is causing "substantial disruption" to the agency or unit involved. The Committee expects all agencies to implement a leave-transfer program before requesting an exclusion.

Agencies which are excluded by OPM shall make a sustained effort to eliminate the conditions on which the exclusion is based, and OPM will periodically review exclusions made under this authority and may at any time revoke an exclusion. OPM shall notify Congress of any exclusions or revocations of exclusions.

Employees who are in a transferred-leave status at the time their agency is excluded from the program may continue to use any transferred leave to their credit.

#### EXCEPTED AGENCIES

The Central Intelligence Agency (CIA) has advised the Committee that CIA participation in the leave-transfer program may inadvertently compromise intelligence sources and methods because of the record keeping requirements which OPM may impose in order to fulfill its obligation to report to Congress before expiration of the program. The Committee recognizes that other intelligence agencies may have similar problems.

Accordingly, the Committee amendment exempts the CIA, the Defense Intelligence Agency, the National Security Agency, the Federal Bureau of Investigation, and any other intelligence agency or unit of an intelligence agency that the President may designate from the Government-wide program established and administered by OPM. Instead, the Committee amendment requires these agencies, or units of agencies, to establish, through regulation, an agency-wide leave-transfer program consistent with the Government-wide program to the extent practicable.

The Committee is aware of the potential for a President to determine that a unit of Government is principally involved in intelligence activities after the leave-transfer programs are scheduled to commence, four months after the date of enactment of the bill. It is not the Committee's intent that employees of a newly-designated agency be barred from participation in the leave-transfer program. The Committee intends that, if a unit of Government is so designated after the commencement date of the leave-transfer program, that unit of Government would no longer participate in the Government-wide leave-transfer program but, would establish its own program in the same manner as the intelligence agencies specifically enumerated in the bill.

The bill, as amended, requires each excepted agency to report to Congress six months before the scheduled termination date of the agency's leave-transfer program. The Committee does not believe that the reports of the excepted agencies need to be so detailed as

to compromise intelligence sources and methods. Rather, the Committee is interested in the numbers of employees involved, the amount of leave transferred, and other comments on the general administration and operation of a leave-transfer program.

The Committee notes that the section of the bill which prohibits coercion also applies to the excepted agencies. The Committee does not intend to create any new avenues of appeal for employees who believe they have been coerced into participating, or not participating, in this program. The Committee recognizes that the excepted agencies have internal systems for resolving personal grievances and intends that any allegation of coercion to be handled through these internal procedures.

#### ALTERNATIVE LEAVE-TRANSFER PROGRAMS

The bill requires OPM, with the concurrence of the agency involved, to establish three agency-wide alternative leave-transfer programs. One program involves a leave fund to which employees contribute annual leave. Those employees needing leave would withdraw leave from the fund. OPM expressed opposition to the leave fund experiment on the grounds that it would be more difficult to administer and may give employees the opportunity to "dump" leave that they would otherwise lose at the end of the year.

The Committee notes that successful leave funds are being administered by the State of Maryland for its employees and by the State of Connecticut for certain collective bargaining unit employees. Since leave funds are being run successfully in other jurisdictions, the Committee sees no reason why the Federal Government should not experiment with a leave fund.

A second alternative program is designed to test the transfer of sick leave, as well as annual leave, in a manner similar to the Government-wide program. A third program would allow donations of sick leave only when donations of annual leave prove insufficient to cover the duration of the personal emergency.

The Committee notes OPM's strong objections to the inclusion of sick leave in H.R. 3757. OPM believes that the transfer of sick leave would result in additional costs to the Federal Government. The Committee believes that the only way to accurately measure the impact of including sick leave is to authorize these experiments to determine whether OPM objections to the transfer of sick leave are well-founded.

#### COMMENCEMENT AND TERMINATION OF PROGRAMS

The bill provides that the Government-wide leave-transfer program and each alternative leave-transfer program shall commence not later than four months after the date of enactment and shall terminate 3 years after the date of its commencement. In the event that a program terminates and there are Federal employees whose personal emergencies have not terminated, any leave which has been transferred to those employees shall remain to their credit and be available for use as if the program had not been terminated.